

WEST VIRGINIA LEGISLATURE

2022 SECOND EXTRASORDINARY SESSION

Introduced

House Bill 202

BY DELEGATES HANSHAW (MR. SPEAKER) AND SKAFF

(BY REQUEST OF THE EXECUTIVE)

[Introduced April 25, 2022]

1 A BILL to amend and reenact §18B-1-1f of the Code of West Virginia, 1931, as amended; as
2 contained in Chapter 149, Acts of the Legislature, Regular Session, 2022; and to amend
3 and reenact and §18B-1-2 of said code; all relating to reclassifying Bluefield State College
4 as a statutorily exempt school.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GOVERNANCE.

§18B-1-1f. State college and university exemption status.

1 (a) The Legislature finds that:

2 (1) Efficiencies, entrepreneurialism, and the effectiveness of governing boards in fulfilling
3 certain goals can be incentivized through the accountability and autonomy associated with
4 exemption status for state colleges and universities based on meeting certain criteria; and

5 (2) Leading higher education authorities in the nation identify common, key performance
6 indicators as an important measure of institutional effectiveness, including, but not limited to,
7 enrollment benchmarks, fiscal benchmarks, and student success benchmarks.

8 (b) The following definitions apply to terms used in this section:

9 (1) "Administratively exempted schools" means state colleges and universities:

10 (A) That achieve and maintain three out of five of the following:

11 (i) Graduation rates: A three-year average graduation rate of not less than 45 percent;

12 (ii) Retention rates: A three-year average retention rate of not less than 60 percent; and

13 (iii) Credit head count enrollment: A three-year credit head count enrollment increase, or
14 a decrease of not more than five percent over the same period;

15 (iv) Days of cash reserved: A three-year average of not less than 50 days cash reserved;

16 and

17 (v) Composite Financial Index: A Composite Financial Index of not less than one as
18 reported in the college and university's audited financial statements; or

(B) Whose governing board requests a review by the chancellor of any special circumstances and the commission grants administratively exempted status based on those special circumstances as verified by the chancellor after his or her review.

(2) "Composite Financial Index" means the benchmarking tool used by the Higher Learning Commission as a financial indicator and developed specifically for the higher education industry and is a combination of several different ratios, each of which is comprised of data that, when analyzed further, can provide insight into an institution's financial health and inform decision-making processes;

(3) "Credit headcount enrollment" means the total number of unique students, but not counting dual-enrolled high school students, who enrolled in credit-bearing classes during the fall, spring, and summer terms in a given academic year at a specific institution;

(4) "Days of cash reserved" means the audited end of fiscal year cash balance, multiplied by 365, and then divided by the audited total expenses less depreciation, and less other post employment benefit and pension liability expenses;

(5) "Graduation rates" means the proportion of first time in college students who obtain a bachelor's degree within six years, as further defined by and reported to the commission;

(6) "Retention rates" means the proportion of first-time, fall term, full-time freshmen students who are in continuing enrollment in the fall term of the next succeeding year; and

(7) "State college and university" shall have the same meaning as provided in §18B-1-2 of this code.

(c) Any state college and university may apply to the commission for designation as an administratively exempted school. The commission shall make its determination as to whether to grant or deny exemption designation based on the definition of administratively exempted school. The commission shall propose rules for legislative approval pursuant to §29A-3A-1 *et seq.* of this code to implement the provisions of this section and that addresses loss of an administratively exempted designation. The rule shall at least include the following:

(1) After the first year an administratively exempted school fails to meet three of the five criteria under the definition of administratively exempted schools, the commission may advise the institution on strategies that may be implemented in order to meet three of the five criteria before the following year;

(2) An institution may not lose its designation as an administratively exempted school until it has failed to meet three of the five criteria under the definition of administratively exempted schools for two consecutive years;

(3) If an institution is administratively exempt based on special circumstances, the commission may revoke the administratively exempted status of a state college and university if it determines that the special circumstance that the state college and university's administratively exempted status is based on no longer exists; and

(4) The commission shall provide notice to the institution at least 30 days before revoking the institution's administratively exempted status.

(d) Notwithstanding any other provision of this code to the contrary:

(1) West Virginia University, including West Virginia University Potomac State College and West Virginia University Institute of Technology; Marshall University; Bluefield State College; and the West Virginia School of Osteopathic Medicine, which are statutorily exempted schools under §18B-1-2 of this code, are institutions of unique characteristics and their continuing inclusion as a statutorily exempted school is confirmed; and

(2) No other state institution of higher education maintains exempted school status pursuant to any other provision of this code except any exempted school status designated by the commission pursuant to this section: *Provided*, That notwithstanding any provision of this section to the contrary, any college or university shall be exempt from the requirement that the commission approve the establishment of new four-year programs on their own campuses for programs incentivized within the funding formula established in §18B-1B-4 of this code if the state

70 appropriation to that school is less than 40 percent of their operating expenses for three
71 consecutive years.

72 (e) Notwithstanding any other provision of this code to the contrary, any state college and
73 university that applies and is designated by the commission as an administratively exempted
74 school is exempt from the following:

75 (1) The required approval of capital projects to ensure that capital projects and facility
76 needs are managed effectively pursuant to §18B-1B-4(a)(10) of this code;

77 (2) The development and approval of institutional mission definitions pursuant to §18B-
78 1B-4(a)(34) of this code;

79 (3) The program approval required pursuant to §18B-1B-4(a)(35) of this code;

80 (4) The rules providing guidance to the governing boards in filling vacancies in the office
81 of the president pursuant to §18B-1B-6(d) of this code;

82 (5) The commission's rule governing and controlling acquisitions and purchases pursuant
83 to §18B-5-4 of this code, upon adoption by the board of governors of said school of its own rule
84 governing and controlling acquisitions and purchases pursuant to §18B-5-4 of this code, following
85 the procedures for adoption of rules provided for in this code;

86 (6) The required approval of capital improvement projects exceeding \$3 million pursuant
87 to §18B-19-6 of this code;

88 (7) The required approval of lease-purchase agreements for capital improvements and
89 equipment of \$1.5 million or greater pursuant to §18B-19-11 of this code; and

90 (8) The required approval of real estate transactions, lease purchase, and new building
91 construction exceeding \$1 million pursuant to §18B-19-13 of this code.

92 (g) Not later than the January interims of each year, the commission shall submit a report
93 to the Legislative Oversight Commission on Education Accountability relating to the
94 administratively exempted schools eligibility criteria established by this section, providing the data
95 for each of the three preceding years, as available, and the three-year average thereof, for each

96 of the state institutions of higher education under its jurisdiction. The commission shall share the
97 report with the institutions.

§18B-1-2. Definitions.

1 The following words when used in this chapter and Chapter 18C of this code have the
2 meanings ascribed to them unless the context clearly indicates a different meaning:

3 “Administratively linked community and technical college” means a state institution of
4 higher education delivering community and technical college education and programs which has
5 maintained a contractual agreement to receive essential services from another accredited state
6 institution of higher education prior to July 1, 2008;

7 “Advanced technology center” means a facility established under the direction of an
8 independent community and technical college or the council for the purpose of implementing and
9 delivering education and training programs for high-skill, high-performance 21st century
10 workplaces;

11 “Approve” or “approval”, when used in reference to action by the commission or the
12 council, means action in which the governance rationale of a governing board under its jurisdiction
13 is given due consideration, and the action of the commission is to additionally establish whether
14 the proposed institutional action is consistent with law and established policy and is an appropriate
15 advancement of the public interest;

16 “Board of visitors” means the advisory board previously appointed for the West Virginia
17 Graduate College and the advisory board previously appointed for West Virginia University
18 Institute of Technology, which provide guidance to the Marshall University Graduate College and
19 West Virginia University Institute of Technology, respectively;

20 “Broker” or “brokering” means serving as an agent on behalf of students, employers,
21 communities, or responsibility areas to obtain education services not offered at that institution.
22 These services include courses, degree programs, or other services contracted through an
23 agreement with a provider of education services either in-state or out of state;

24 “Chancellor” means the Chancellor for Higher Education where the context refers to a
25 function of the Higher Education Policy Commission. “Chancellor” means the Chancellor for
26 Community and Technical College Education where the context refers to a function of the West
27 Virginia Council for Community and Technical College Education;

28 “Chancellor for Community and Technical College Education” means the chief executive
29 officer of the West Virginia Council for Community and Technical College Education employed
30 pursuant to §18B-2B-3 of this code;

31 “Chancellor for Higher Education” means the chief executive officer of the Higher
32 Education Policy Commission employed pursuant to §18B-1B-5 of this code;

33 “Collaboration” means entering into an agreement with one or more providers of education
34 services in order to enhance the scope, quality, or efficiency of education services;

35 “Community and technical college”, in the singular or plural, means the free-standing
36 community and technical colleges and other state institutions of higher education which deliver
37 community and technical college education. This definition includes Blue Ridge Community and
38 Technical College, BridgeValley Community and Technical College, Eastern West Virginia
39 Community and Technical College, Mountwest Community and Technical College, New River
40 Community and Technical College, Pierpont Community and Technical College, Southern West
41 Virginia Community and Technical College, West Virginia Northern Community and Technical
42 College, and West Virginia University at Parkersburg;

43 “Community and technical college education” means the programs, faculty,
44 administration, and funding associated with the delivery of community and technical college
45 education programs;

46 “Community and technical college education program” means any college-level course or
47 program beyond the high school level provided through a public institution of higher education
48 resulting in or which may result in a two-year associate degree award including an associate of
49 arts, an associate of science, and an associate of applied science; certificate programs and skill

50 sets; developmental education; continuing education; collegiate credit and noncredit workforce
51 development programs; and transfer and baccalaureate parallel programs. All programs are
52 under the jurisdiction of the council. Any reference to “post-secondary vocational education
53 programs” means community and technical college education programs as defined in this
54 subdivision;

55 “Confirm” or “confirmation”, when used in reference to action by the commission, means
56 action in which substantial deference is allocated to the governing authority of a governing board
57 under its jurisdiction and the action of the commission is to review whether the proposed
58 institutional action is consistent with law and established policy;

59 “Council” means the West Virginia Council for Community and Technical College
60 Education created by §18B-2B-1 *et seq.* of this code;

61 “Dual credit course” or “dual enrollment course” means a credit-bearing college-level
62 course offered in a high school by a state institution of higher education for high school students
63 in which the students are concurrently enrolled and receiving credit at the secondary level;

64 “Essential conditions” means those conditions which shall be met by community and
65 technical colleges as provided in §18B-3C-3 of this code;

66 “Exempted schools” or “statutorily exempted school” means West Virginia University,
67 including West Virginia University Potomac State College and West Virginia University Institute
68 of Technology; Marshall University; Bluefield State College; and the West Virginia School of
69 Osteopathic Medicine;

70 “Governing boards” or “boards” means the institutional boards of governors created by
71 §18B-2A-1 of this code;

72 “Higher Education Policy Commission”, “policy commission” or “commission” means the
73 commission created by §18B-1B-1 of this code;

74 “Independent community and technical college” means a state institution of higher
75 education under the jurisdiction of the council, which is independently accredited, is governed by

its own independent governing board, and may not be operated as a branch or off-campus location of any other state institution of higher education. This definition includes Blue Ridge Community and Technical College, BridgeValley Community and Technical College, Eastern West Virginia Community and Technical College, Mountwest Community and Technical College, New River Community and Technical College, Pierpont Community and Technical College, Southern West Virginia Community and Technical College, West Virginia Northern Community and Technical College, and West Virginia University at Parkersburg;

“Institutional operating budget” or “operating budget” means for any fiscal year an institution’s total unrestricted education and general funding from all sources, including, but not limited to, tuition and fees and legislative appropriation, and any adjustments to that funding as approved by the commission or council based on comparisons with peer institutions or to reflect consistent components of peer operating budgets;

“Rule” or “rules” means a regulation, standard, policy, or interpretation of general application and future effect;

“Sponsoring institution” means a state institution of higher education that maintained an administrative link to a community and technical college providing essential services prior to July 1, 2008. This definition includes institutions whose governing boards had under their jurisdiction a community and technical college, regional campus, or a division delivering community and technical college education and programs;

“State college and university” means ~~Bluefield State College~~, Concord University, Fairmont State University, Glenville State College, Shepherd University, West Liberty University, or West Virginia State University;

“State institution of higher education” means any university, college, or community and technical college under the jurisdiction of a governing board as that term is defined in this section;

“Statewide network of independently accredited community and technical colleges” or “community and technical college network” means the state institutions of higher education under

102 the jurisdiction of the West Virginia Council for Community and Technical College Education
103 which are independently accredited, each governed by its own independent governing board, and
104 each having a core mission of providing affordable access to and delivering high quality
105 community and technical education in every region of the state; and
106 “Vice chancellor for administration” means the person employed in accordance with §18B-
107 4-2 of this code. Any reference in this chapter or Chapter 18C of this code to “senior administrator”
108 means vice chancellor for administration.

NOTE: The purpose of this bill is to classify Bluefield State College as an “administratively exempted school” to relieve it from obtaining approval from the Higher Education Policy Commission for certain planning, acquisition, and capital improvement projects.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.